



**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

ORIGINAL

May 24, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: CC Docket No. 93-179; Price Cap Regulation of Local Exchange Carriers;
Rate of Return Sharing and Lower Formula Adjustment

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Petition for Reconsideration in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Chris Frentrup
Senior Regulatory Analyst
Federal Regulatory

Enclosure
CF

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List A B C D E



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of)
)
Price Cap Regulation of)
Local Exchange Carriers) CC Docket No. 93-179
)
Rate-of-Return Sharing)
and Lower Formula Adjustment)
)

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PETITION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to Section 1.106 of the Commission's rules, MCI hereby submits its petition for reconsideration of the Add-Back Order in the above-captioned docket.¹ Although MCI applauds the Commission's decision to require add-back, MCI believes that the Commission was incorrect in its determination that it could not make "add-back" retroactive to the beginning of price caps. MCI urges the Commission, for the reasons set out herein, to make add-back retroactive to the first annual access filing in which add-backs would have been implemented, i.e., 1993.

II. BACKGROUND

The Commission adopted price caps for the local exchange carriers (LECs) effective on January 1, 1991. As part of that regulatory scheme, the

¹ In the Matter of Price Cap Regulation of Local Exchange Carriers; Rate of Return Sharing and Lower Formula Adjustment, CC Docket No. 93-179, Report and Order, FCC 95-133, released April 14, 1995 (Add-Back Order).

Commission adopted a backstop sharing and low-end adjustment mechanism. These features of the plan required prospective adjustments to a LEC's Price Cap Indexes (PCIs) if the LEC's earnings in the previous calendar year exceeded certain levels.

The first application of the sharing and low-end adjustment mechanisms occurred in the 1992 annual access filing. The first annual access filing in which the issue of whether add-back was required thus arose in the next annual filing, in 1993. In that filing, several carriers computed their earnings without the add-back, and one carrier computed its earnings with the add-back. The Commission suspended those rates and instituted an investigation into whether add-back was required.² The Commission also adopted the NPRM in this docket shortly before those tariffs took effect, to examine the general issue of add-back adjustments.³ The tariff investigation is still pending.

III. FAILURE TO MAKE ADD-BACK ADJUSTMENTS RETROACTIVE IS INCONSISTENT WITH THE COMMISSION'S FINDINGS IN THE ADD-BACK ORDER

In the Report and Order of which MCI now seeks reconsideration, the Commission makes, inter alia, two findings. The first of these is "...an add-back requirement is not only fully consistent with, but also an essential element

² 1993 Annual Access Tariff Filings, 8 FCC Rcd 4960 Com. Car. Bur. 1993); see also 1994 Annual Access Tariff Filings, 9 FCC Rcd 3519 (Com. Car. Bur. 1994) (adding the 1994 access rates to the 1993 investigation of add-backs).

³ Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, 8 FCC Rcd 4415 (1993) (NPRM).

of, the system of price cap regulation that we adopted for LECs in 1990."⁴ The Commission then notes that "... the Commission did not state that it intended to eliminate the requirement under rate-of-return regulation that carriers subtract revenues reflecting out-of-period earnings for purposes of calculating current year earnings."⁵ The second finding the Commission made is that requiring add-back adjustments "...does not constitute a major change to the LEC price cap rules."⁶

As the Commission rightly points out, add-back was the status quo for computation of the LECs' rate of return under rate-of-return regulation, and nothing in the Commission's LEC price cap decision amended or modified those computation requirements in any way. Absent any Commission direction to the contrary, therefore, there could be no expectation that the Commission's existing add-back requirement would have disappeared.

The Commission's finding that it can apply its new rule requiring add-back only prospectively is thus inconsistent with findings the Commission made in its Add-Back Order. MCI argues that the rule the Commission adopted is not a new rule; it is merely a codification of long-standing, and prior to the advent of price cap regulation, unopposed Commission practice. MCI urges the Commission on reconsideration to require the retroactive application of add-

⁴ Add-Back Order at para. 32.

⁵ Id.

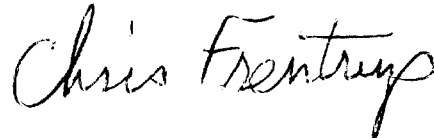
⁶ Id. at para. 50.

back adjustments.⁷

IV. CONCLUSION

The Commission made the correct finding that add-back adjustments are an integral part of the Commission's price cap plan. However, the Commission erred when it declined to make the application of this decision retroactive to the beginning of price caps. For the reasons stated herein, MCI urges the Commission, on reconsideration to apply its add-back requirement retroactive to the beginning of price cap regulation.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in cursive script that reads "Chris Frentrup".

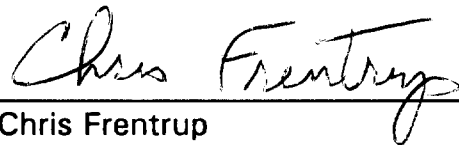
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May 24, 1995

⁷ Given the Commission's statements in this docket, MCI sees no way the Commission can find in its on-going investigation into the 1993 and 1994 annual access tariff filings that add-back adjustments do not apply.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on May 24, 1995.

A handwritten signature in cursive script, reading "Chris Frentrop", written in black ink. The signature is positioned above a horizontal line.

Chris Frentrop
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CERTIFICATE OF SERVICE

I, Barbara B. Nowlin, do hereby certify that copies of the foregoing MCI petition were sent via first class mail, postage paid, to the following on this 24th day of May, 1995.

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